

1           A       Yes. And the advantage of being  
2 able to tier it versus just not being able to  
3 carry it is that we could give it to the,  
4 let's say, three percent or five percent or  
5 some very small percentage of people wanted  
6 those games. Those games were not your  
7 hometown team, by definition, you were seeing.  
8 If you live in Philadelphia, you would see  
9 every Eagles game. These were eight out-of-  
10 market games.

11                   And our feeling was, and is, that  
12 those out-of-market games are only of appeal  
13 to a very small number of people. And to pay  
14 [REDACTED] to give it to everyone,  
15 when you can give it to that small number of  
16 people by putting it on a sports tier, which  
17 that small number of people can purchase, that  
18 was clearly a better economic benefit for us.

19           Q       When you announced that you were  
20 going to move it to a tier, what happened?

21           A       Well, what happened was the -- it  
22 started to get into the press that we might be

1 doing a tier, and Steve Bornstein called me  
2 and said, "Why are you tiering this?" And I  
3 said, "Because we have the right, and because  
4 it makes sense for our company," and he was  
5 very upset.

6 Q And then, was there a lawsuit?

7 A Eventually, yes.

8 Q Did the NFL sue you in New York?

9 A Yes.

10 Q Last subject I want to change to  
11 -- did the NFL ever offer you a lower price  
12 than the surcharge they --

13 A No.

14 Q -- extended?

15 A No.

16 Q Did the NFL, for example, ever  
17 come to you and say, "Well, here is a lower  
18 price. If we drop it from [REDACTED] down to [REDACTED]  
19 [REDACTED] could we get broader  
20 distribution," did that ever happen?

21 A Not at that time period, no.

22 Q Okay. Now, Versus and Golf is

1 another one of your channels, yes?

2           A       Yes.

3           Q       Roughly, what are they priced at  
4 on a -- is that highly confidential  
5 information?

6           A       It is pretty confidential.

7           Q       Yes.

8           A       But I can do it roughly.

9           Q       We have the courtroom open right  
10 now, so for the purposes of this question --  
11 but it is our information. So if you can do  
12 it roughly in a way you are comfortable with  
13 publicly, let's try that.

14          A       Well, I think if you said that  
15 both of those services are about a quarter --

16          Q       Okay.

17          A       -- that most cable companies pay  
18 about a quarter for those services, you would  
19 not be far off.

20          Q       Okay. And if the NFL Network were  
21 to come to you and say, "The price is now a  
22 quarter," in other words, a price comparable

1 to Versus and Golf, would you give it broader  
2 distribution?

3           A       Yes.

4           Q       What broader distribution are you  
5 prepared to give them?

6           A       I think we would put it on D2.

7           Q       And D2 is your what?

8           A       Is the broadly distributed digital  
9 tier.

10                   MR. CARROLL:   Okay.   We have no  
11 further questions, Your Honor.

12                   JUDGE SIPPEL:   Okay.

13                   MR. PHILLIPS:   Your Honor?

14                   JUDGE SIPPEL:   Who is going to  
15 conduct the cross?

16                   MR. PHILLIPS:   Yes, Your Honor.

17                   JUDGE SIPPEL:   Yes.   Mr. Phillips?

18                   MR. PHILLIPS:   Yes, sir.

19                   JUDGE SIPPEL:   Okay.

20                               CROSS EXAMINATION

21                   BY MR. PHILLIPS:

22           Q       Good afternoon, Mr. Burke.

1           A       Good afternoon.

2           Q       How are you?

3           A       I'm fine, thanks.

4           Q       It has been a few months since you  
5 and I last talked.

6           A       That's right.

7           Q       I just want to start off with one  
8 thing. During these negotiations for the  
9 eight-game package, when you learned that the  
10 NFL was considering keeping the games for  
11 itself or awarding them to OLN or Versus, you  
12 said you mentioned the tiering right, you  
13 mentioned tiering to some of the NFL  
14 employees, correct?

15          A       Yes, sir.

16          Q       I just want to be very -- you  
17 mentioned this more than once to several of  
18 the NFL employees, correct?

19          A       Yes.

20          Q       And you mentioned it to Mr.  
21 Goodell, who was then the Chief Operating  
22 Officer of the league.

1           A       Yes.

2           Q       And you mentioned it to Mr.

3 Grubman?

4           A       Yes.

5           Q       And you mentioned it to Mr.

6 Bornstein, correct?

7           A       Yes.

8           Q       And your reason for mentioning it

9 to them is you wanted to make sure that they

10 took into account the fact that you might

11 lower their distribution dramatically in

12 making the decision about whether or not to

13 award the games to the NFL Network, correct?

14          A       That is correct.

15          Q       Now, you said that if you -- that

16 when the NFL first approached you with a

17 contract that insisted on this tiering right

18 in the contract, because if you didn't you

19 would have almost unlimited financial

20 liability. That's what I wrote down at least.

21 Is that what you said?

22          A       Sort of a financial liability

1 without a clear top to it.

2           Q       But you negotiated in that  
3 contract a price for the NFL Network, correct,  
4 a rate card?

5           A       Yes.

6           Q       And that was the rate card that  
7 was in effect throughout the term of that  
8 contract, correct?

9           A       That is correct.

10          Q       It was a multi-year contract.

11          A       That's correct.

12          Q       And the NFL couldn't charge more  
13 than that rate card in there, at least unless  
14 other events occurred, correct?

15          A       I believe the way it worked is  
16 they could charge the [REDACTED] or whatever  
17 that rate card was, but if they put games on  
18 they could add a surcharge to the game -- for  
19 the games. But if the surcharge -- if the  
20 games were added and the surcharge was added,  
21 and we had not received what ended up being  
22 the eight-game package or Sunday Ticket, we

1 could then tier the network.

2 Q And without going into how much  
3 the surcharge was, Mr. Burke, because I don't  
4 want to have to clear all the courtroom  
5 either, but I think we -- for my purposes, we  
6 can establish that the only instance in which  
7 there was a different price from the surcharge  
8 was if the NFL added a package of live regular  
9 season football games, correct?

10 A That's right. That's right.

11 Q And if the NFL decided to add a  
12 package of live regular season football games,  
13 you negotiated a price for that, too, correct?

14 A We negotiated a mechanism. The  
15 NFL was required to give us a price at the  
16 time.

17 Q It was a price cap, wasn't it?

18 A I believe there might have been a  
19 cap, yes.

20 Q And they couldn't charge you more  
21 than that price cap, could they?

22 A That's right. That's right.



1           Q       So instead of almost unlimited  
2 financial liability, you had a price and a  
3 price cap for the term of that contract, is  
4 that correct, sir?

5           A       I guess that's right.

6                   MR. CARROLL: Okay. Now, sir --  
7 I'm going to try to do this, Your Honor,  
8 without going into financial information, but  
9 I don't know if I can. But we'll try.

10                   BY MR. CARROLL:

11           Q       You mentioned that when you  
12 reached the decision to tier that you made  
13 that decision because carrying the games in  
14 D2, I take it, was going to result in a [REDACTED]  
15 [REDACTED] incremental cost. Is that  
16 correct?

17           A       That's correct.

18           Q       And by putting them on a narrow  
19 sports tier you didn't have to incur that  
20 incremental cost, correct?

21           A       That is correct. You would be  
22 giving it to people who wanted the games and

1 were willing to pay for the sports tier. So,  
2 in effect, you really are incurring a much  
3 smaller programming cost, and you are getting  
4 revenue from the people who buy the tier.

5 Q And by the way, how much do you  
6 charge for that sports tier to people who want  
7 to get that?

8 A Well, in some packages it is free  
9 if you are -- if you buy a wide variety of  
10 video services. Some of the time it is a la  
11 carte, and when it's a la carte it depends on  
12 the system. It could be \$2 or \$5. It is not  
13 a very large amount.

14 Q But if you wanted to buy the  
15 sports tier itself, it is on the average  
16 around the country \$5 to \$7 a package,  
17 correct?

18 A I think about \$5 is probably  
19 right.

20 Q Thank you. And that \$5, without  
21 getting into specifically what the surcharge  
22 is, that is many times what -- the surcharge

1 that the NFL had for putting those live games  
2 on the network, isn't it?

3       A       Yes, but there were a lot of other  
4 channels than the sports channel.

5       Q       Thank you, sir. Now, to  
6 understand your position for a second, Mr.  
7 Burke, you're President of Comcast  
8 Corporation, correct?

9       A       Actually, I am Chief Operating  
10 Officer of Comcast Corporation.

11       Q       And Comcast Corporation is the  
12 parent company that sits astride both the  
13 cable distributor arm and the programming arm,  
14 correct?

15       A       That is correct.

16       Q       And the cable distributing arm is  
17 about 95 percent of the business of Comcast  
18 Corp?

19       A       Yes. Yes.

20       Q       And the programming arm is about  
21 five percent of that, correct?

22       A       Yes.

1           Q       And you've stated that, in fact,  
2 you would like to change those percentages,  
3 correct?

4           A       Yes.

5           Q       You would like to change that up  
6 to 35 to 40 percent on the programming 'side,  
7 correct?

8           A       Well, I believe that the company  
9 would be more well-rounded and more  
10 diversified if we had a larger non-cable  
11 component to the company. For a company our  
12 size, 95 percent to be in one business, even  
13 though it has been quite a good business, to  
14 me I would rather see us more diversified.

15          Q       And purchasing that package of  
16 games from the NFL to put on Versus was one  
17 way to accomplish that, correct?

18          A       It clearly was part of a strategy  
19 to make Versus a larger entity. If you look  
20 at Versus today, it is probably worth -- it  
21 probably represents one percent of our  
22 company. And I think if we had gotten the NFL

1 games, and then gotten some Major League  
2 Baseball games, and gotten NASCAR, and gotten  
3 some other product, we had the chance to turn  
4 it into something bigger than one percent of  
5 the company.

6 Q Go back to that [REDACTED]  
7 [REDACTED] incremental figure. Now, that is what  
8 you would have paid in addition if you didn't  
9 put the NFL Network on a tier, correct?

10 A That is right.

11 Q Now, that eight-game package that  
12 prompted the surcharge and prompted your  
13 tiering, that's the same eight-game package  
14 that Comcast had tried to license from the  
15 NFL, correct?

16 A That is correct.

17 Q And I am going to have to ask  
18 counsel about this. Do you have any objection  
19 to giving the ballpark amounts that Comcast  
20 was going to pay for that eight-game package?

21 A I don't.

22 Q And what was the ballpark amount

1 that you were going to pay for that eight-game  
2 package, the value?

3       A       It was complex, because there were  
4 different ways of -- there were rights fees,  
5 there was equity. But I think if you -- I  
6 think a fair, reasonable analysis would say  
7 somewhere between \$400 million and \$500  
8 million a year.

9       Q       A year.

10      A       That's correct.

11      Q       For five years, correct?

12      A       I don't recall the exact duration,  
13 but it was a multi-year deal for sure.

14      Q       So it was approximately at least  
15 \$2 billion, give or take, over a five --

16      A       It was a big number like \$2  
17 billion, that's correct.

18      Q       And that was the value that you  
19 put on acquiring those eight live regular  
20 season NFL games for Versus, correct?

21      A       It was the value that we -- it was  
22 the amount of money that we were prepared to

1 pay to get the eight games, because we thought  
2 that on those eight games we could build a  
3 cable channel that would be a great channel.

4           I think we -- most of our analysis  
5 we would have assumed that we would lose money  
6 on those eight games, that that kind of rights  
7 fee was more than market, but it was a very  
8 important step toward building a fully  
9 distributed, fully well-rounded sports  
10 package.

11       Q       Mr. Burke, when Comcast started  
12 showing those games on the NFL Network in  
13 2006, it was paying the surcharge, correct?

14       A       Yes.

15       Q       But it hadn't yet put the network  
16 on a tier yet, correct?

17       A       That's correct.

18       Q       And so it was paying the full  
19 amount of money, that extra incremental [REDACTED]  
20 [REDACTED] correct?

21       A       I don't think it was [REDACTED]  
22 I don't recall exactly, but I think we only

1 paid it for the months when the package went  
2 on, so it was never [REDACTED] in a year.  
3 It was just whatever one-twelfth of that is  
4 times however many months we paid.

5 Q Now, when you put that package  
6 onto -- when those -- NFL Network was on D2,  
7 and the surcharge had kicked in, before you  
8 tiered, the price went up by that much, that  
9 [REDACTED] times everything, the extra amount of  
10 money, you didn't raise your prices to the  
11 consumers who were subscribing to the D2  
12 package, did you?

13 A Not at the time that we got the  
14 incremental cost. That's correct.

15 Q And, indeed, then later, a year  
16 later when you started actually to put the NFL  
17 Network on a tier --

18 A Correct.

19 Q -- so that you weren't incurring  
20 the costs of the surcharge spread over the  
21 entirety of the D2 tier, you didn't refund the  
22 customers at D2 the money that they were --



1 that you were now saving, correct?

2           A       No. Programs -- channels come in  
3 and out of distribution in a cable company.  
4 Typically, you would add a couple of channels  
5 every year, you might reposition one every  
6 year or every other year. And when you make  
7 those kinds of changes, you typically don't  
8 adjust the price up or down.

9           Q       Mr. Burke, I believe Mr. Carroll  
10 pointed out that you own both Versus and the  
11 Golf Channel, correct?

12          A       We do.

13          Q       And I take it that there are  
14 benefits to having those channels owned by a  
15 cable distributor, are there not?

16          A       I'm not sure what you mean.

17          Q       Well, you may recall when my  
18 colleague, Mr. Schmidt here, when he took your  
19 deposition, I don't know, probably about a  
20 month ago, a few weeks ago, and he asked you  
21 if there are benefits, and you mentioned that  
22 there were -- that it's fair to say that the

1 programming channels that we own get treated  
2 like siblings as opposed to like strangers.

3 Do you remember that?

4       A       I do.

5       Q       So the channels that you own get a  
6 better audience with the cable distributor,  
7 correct?

8       A       They certainly would have a chance  
9 to spend more time with the people who are on  
10 the cable side than a network that was not  
11 affiliated with our company.

12       Q       And they would get a different  
13 level of scrutiny, correct?

14       A       Yes, I think that is a fair  
15 statement.

16       Q       And they would get a better  
17 ability to sell to the cable distributor than,  
18 say, a non-affiliated independent channel  
19 would, correct, sir?

20       A       I think they would probably get  
21 more time to make their case. That is clearly  
22 true.

1           Q       And another advantage is that the  
2 channels that are owned by Comcast get to use  
3 the Comcast cable distributor arm to negotiate  
4 deals for them, correct?

5           A       No.

6           Q       Is that not correct, sir?

7           A       That is not correct.

8           Q       Matt Bond, who is he?

9           A       Matt Bond is the head of  
10 programming for Comcast Cable.

11          Q       He is solely on the cable side,  
12 isn't he?

13          A       That is correct.

14          Q       And didn't he negotiate the  
15 ability to get the negotiation rights that you  
16 told Mr. Carroll about?

17          A       With the NFL Network?

18          Q       Yes.

19          A       Yes, of course.

20          Q       So, and wasn't that a benefit to  
21 Versus and -- I'm sorry. Wasn't that a  
22 benefit to the Comcast programming side, to

1 Versus in particular?

2 A Not at all.

3 Q It wasn't -- getting the right to  
4 negotiate --

5 A Oh, I understand what you're  
6 saying. That was -- that was a benefit to the  
7 programming side that we clearly wanted. Matt  
8 Bond was executing for the cable side.

9 Q Yes, sir.

10 A But he -- Matt Bond would never be  
11 in a discussion about Versus or prices or  
12 anything on the programming side.

13 Q But if I understand your  
14 testimony, Mr. Burke, Matt Bond was in the  
15 discussion about acquiring rights on behalf of  
16 Versus to negotiate for an eight-game package,  
17 correct?

18 A No, not really.

19 Q No, not really? He --

20 A Matt Bond's job was to do the best  
21 deal he could on the NFL Network.

22 Q And, indeed, one of those rights

1 that you negotiated -- and, indeed, I think  
2 you said you wouldn't have done the deal  
3 without -- was the ability to put the network  
4 on a tier --

5 A Right.

6 Q -- if you didn't get the right to  
7 bid for a package of games for the programming  
8 side, correct?

9 A That is why I was in the room.  
10 That is why I do that.

11 Q And Versus in particular.

12 A Yes. But Matt Bond didn't do  
13 that. I did that.

14 Q And so having Matt Bond in the  
15 room on that didn't give you any benefit to  
16 Versus, is that your testimony?

17 A I think if I were not in the room  
18 and had not been looking out for the Versus  
19 eight-game package, we would not have carried  
20 the NFL Network.

21 Q Now, in fact, the cable executives  
22 at Comcast share in bonuses, are incentivized

1 by bonuses that result from the increase of  
2 profits to Comcast overall, right, sir?

3       A       There is a very small part of  
4 everyone's bonus that is based on company  
5 results. The majority of people's bonus is  
6 based on the specific part of the business  
7 they are in and their unit in general.

8       Q       And that small part that you  
9 described, sir, it might be 20 percent,  
10 correct?

11       A       It could be 20. For the very  
12 senior people, it could be as much as 20. But  
13 for most people it would be less.

14       Q       Had you been able to acquire the  
15 eight-game package for Versus or -- that would  
16 have been the most valuable programming on  
17 Versus, correct?

18       A       That is an interesting question.  
19 We have a deal with the NFL, but I think --  
20 well, yes, it would have been the most  
21 valuable programming on Versus, yes.

22       Q       And, indeed, I asked you to

1 compare the value of the NFL eight-game  
2 package with the value of the NHL, and you  
3 told me it would be a multiple, correct?

4       A       I think that is definitely a fair  
5 statement.

6       Q       And when you were looking at  
7 purchasing that eight-game package, or  
8 acquiring the rights to license it for Versus,  
9 you thought it was so valuable that you  
10 believed it belonged on a broadly distributed  
11 tier, correct?

12       A       I believe that Versus deserved to  
13 be on a broadly distributed tier.

14       Q       But you believe that the value of  
15 the eight-game package that you tried to  
16 acquire was so high that it belonged in a  
17 broadly distributed tier, right?

18       A       No, I don't think so.

19       Q       Do you recall -- I asked you a  
20 question --

21               MR. CARROLL: Page and line,  
22 please?

1 MR. PHILLIPS: Page 200. Is this  
2 it? Excuse me one second, Your Honor.

3 MR. CARROLL: This FCC transcript?

4 MR. PHILLIPS: No, this is the New  
5 York -- this is the one that I -- which Mr.  
6 Burke and I had a conversation in  
7 Philadelphia.

8 BY MR. PHILLIPS:

9 Q You remember that, don't you, Mr.  
10 Burke?

11 A Yes.

12 Q And starting at line 25, and going  
13 up, I asked you the question that if you  
14 thought the popularity of the eight-game  
15 package -- I'm adding that -- was so small,  
16 why were you bidding so much for the eight-  
17 game package?

18 MR. CARROLL: I'm sorry. I don't  
19 see where you are.

20 MR. PHILLIPS: I'm at line 25 on  
21 page 200.

22 MR. CARROLL: It starts, "I'm a



1 little confused"?

2 MR. PHILLIPS: Yes.

3 MR. CARROLL: Okay.

4 BY MR. PHILLIPS:

5 Q And if you thought the popularity  
6 was so small, why were you bidding so much for  
7 the eight-game package? And you answered,  
8 "Well, we never would have bid for the eight-  
9 game package anywhere near what we bid if we  
10 would have been required to put it on the  
11 sports tier. The value of the eight-game  
12 package was as high as it was because it was  
13 -- we were going to get out and get  
14 distribution that wasn't on a sports tier."

15 Do you remember that testimony, sir?

16 A Yes, sir. The reason why I said I  
17 don't think the eight games merit broad  
18 distribution is because in that context I was  
19 talking about the eight games as part of  
20 Versus, which was a 365-day essentially fully  
21 distributed channel that already existed.

22 Q So the --